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**NOV 03 2005**

In re Application of :  
Raymond L. White et al :  
Application No. 10/092,672 :  
Filed: March 7, 2002 :  
Attorney Docket No. 316T-003100US :

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition, filed July 28, 2005, to withdraw the holding of abandonment for the above-identified application and, alternatively, a petition under 37 CFR 1.137(b), to revive this application.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on September 27, 2003 for failure to timely respond to the non-final Office mailed August 26, 2003. A Notice of Abandonment was mailed on June 17, 2005.

The instant petition asserts that a reply to the August 26, 2003 Office action was deposited in the U.S. Post Service (USPS) as Express Mail on September 25, 2003, implying that the application should not be held abandoned. In support, the petition is accompanied by a copy of the Express Mail receipt No. EV321689014US; however, the "date-in" on the copy of the Express Mail receipt was left blank, and all other spaces on the label that are normally filled by a USPS employee are completely blank.

#### **PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT**

Under 37 CFR 1.6, correspondence filed in the USPTO is stamped with the date of receipt, except, those mailed via the USPS "Express Mail Post Office to Addressee" service or transmitted by facsimile are stamped with the date of deposit as "Express Mail" with the USPS, or the date the transmission is received by the USPTO, respectively. However, in this case, the reply allegedly mailed to the USPTO utilizing the USPS "Express Mail Post Office to Addressee" service on September 25, 2003, was evidently not received by the USPTO. Applicants may petition the Commissioner to consider the reply filed in the USPTO on the USPS deposit date, i.e., September 25, 2003, provided that:

- (1) The petition is filed promptly after Applicants became aware that the Office has no evidence of receipt of the reply;
- (2) The number of the "Express Mail" mailing label was placed on the reply prior to mailing by "Express Mail";
- (3) the petition includes:
  - (a) a copy of the reply showing the "Express Mail" mailing label number;
  - (b) a copy of any returned postcard receipt;
  - (c) a copy of the "Express Mail" mailing label showing the "date-in";
  - (d) a copy of any other official notation by the USPS relied upon to show the date of deposit; and
  - (e) a statement establishing, to the satisfaction of the Commissioner:
    - (i) deposit of the reply on September 25, 2003
    - (ii) items (a), (b), (c)), (d) above are true copies of their respective originals.

The Office may require additional evidence for determining whether the reply was indeed deposited as "Express Mail" with the USPS on September 25, 2003.

The present petition lacks all the requirements above. Thus, the petition is dismissed.


#### **PETITION UNDER 37 CFR 1.137(b)**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Office action of August 26, 2003 is accepted as having been unintentionally delay.

As authorized, the \$750 petition fee is being charged to petitioner's Deposit Account No. 50-0893.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 1631.

  
Frances Hicks  
Lead Petitions Examiner  
Office of Petitions  
Office of the